

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 957 of 2025

Applicant : Abu Bakar son of Muhammad
Through Mr. Shah Imroze Khan, Advocate

Respondent : The State
through Mr. Tahir Hussain, Asst: PG Sindh

Date of short order : 07-05-2025

Date of reasons : 10-05-2025

REASONS

KHALID HUSSAIN SHAHANI, J. - The applicant Abu Bakar seeks post-arrest bail in a case bearing crime No.732 of 2023 registered at Police Station Peerabad, Karachi, offence under Sections 302, 324, and 34, PPC. His earlier application was declined by the learned Xth Additional Sessions Judge, Karachi West, vide order dated 28.03.2025.

2. The facts, as alleged in the FIR lodged on 09.11.2023, are that on the said date around noon, the complainant along with her husband Sher Afzal, her father, and her brother Attaullah, proceeded to a location where she had been called by her ex-husband Arshad Khan for custody of their daughter. Upon their arrival, Arshad Khan along with his nephew, the present applicant Abu Bakar, allegedly opened direct fire at Sher Afzal, who sustained fatal injuries and died at the spot. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel contended that the applicant has been falsely implicated due to enmity and ulterior motives of the complainant. It was argued that the only eyewitness named in the FIR is the complainant herself, who has now forgiven the applicant and recorded her no-objection to his acquittal. It was also submitted that co-accused Attaullah has already been granted bail, hence the rule of consistency applies in favour of the applicant. Learned counsel further stated that the case has been challaned, the applicant is no longer required for investigation, and there is no likelihood of his absconding or tampering with prosecution witnesses. Learned advocate for applicant relied upon case law cited as 2016 SCMR 907 and SBLR 2023 Sindh 1193.

4. Learned APG opposed the bail and referred to the nature of allegations, highlighting that the applicant was specifically attributed the role of firing upon the complainant as well as causing the fatal injuries to Sher Afzal.

5. Record reflects, the role ascribed to the applicant in the FIR and subsequent proceedings is not of peripheral nature. According to the record, and particularly the testimony of complainant Mst. Saira recorded before the learned trial court, there is no denial of the fact that the present applicant fired upon her, causing injury on her left side waist, resulted in bleeding. This material fact was not controverted during cross-examination.

6. Though the complainant has subsequently expressed forgiveness for the applicant and stated that she would not object to his acquittal, such pardon cannot automatically entitle the accused to bail in the absence of a proper compromise recognized under law. The legal heirs of the deceased did not appear. In this behalf the dictum reported as 1999 YLR 1877 (Mst. Zubaida Khanum v. Muhammad Irshad Hussain and 2 others) and 2018 MLD 1319 (Umar Zeb Vs. The State & another) can safely be referred, where all the Legal Heirs have not forgiven the Petitioner, thus the benefit of partial compromise cannot be extended at bail stage. Where there is a plain statement that the accused had fired upon the complainant. The case judgment cited as "Mst. Zaheera Bibi v. The State and another" 2012 MLD 480 (Peshawar) may be referred as well in this regard. Besides in view of the judgment reported as 2014 YLR 1771 [Supreme Court (AJ&K)] "Ameer Qabal v. State of AJ&K", the Petitioner cannot be extended the concession of bail because of his own conduct even if tentatively assessed at bail stage.

7. Moreover, reliance placed upon the principle enunciated in 2007 SCMR 249 (Abid Vs. The State) is relevant, wherein it was held that a fact not denied in evidence must be treated as established. In the instant case, the complainant's injury stands unchallenged, and an innocent person has lost his life in the same incident.

8. The offences charged, including Section 302, PPC, are of heinous nature and fall squarely within ambit of prohibitory clause of Section 497(1), Cr.P.C. While all the offences in the FIR may be compoundable

under law, the correct forum for adjudicating compromise is the learned trial court, upon due satisfaction of legal requirements and presence of legal heirs.

9. The learned counsel argued that the complainant has since moved to Afghanistan after contracting a marriage and may not return for a formal compromise. However, the mere unavailability of the complainant to pursue compromise does not by itself justify the grant of bail when the ocular account and medical evidence both prima facie support the prosecution's case. Moreover, the learned advocate for the applicant relied upon the case of SBLR 2023 Sindh 1193, wherein the Court was of the opinion that there was no independent ocular testimony has come on record yet as to whether the applicant was involved in the murder of deceased. However, in the present case, the accused is nominated with specific role and the medical report also supportive in this respect. The other case law viz. 2023 MLD 1528 is also distinguishable from the peculiar facts because in that case the Court was of the opinion that the FIR was silent about the presence of accused in the first information report, while in the present case accused is named in the FIR. In that case, court was of the opinion that accused was not shown any overt act, while in the present case accused is showing actively participating in firing. Therefore, both these case laws as referred by the learned advocate for applicant are distinguishable from the peculiar facts and circumstances of the case.

10. In view of the specific role attributed to the applicant, the ocular testimony of the complainant, and the absence of a formal and complete compromise duly verified by the trial court, I am of the considered opinion that the applicant has failed to make out case of further inquiry as envisaged under section 497(2) Cr.P.C.

11. Consequently, this bail application was dismissed vide a short order dated 07.05.2025 and these are the reasons thereof. However, the applicant shall be at liberty to file a compromise application before the learned trial court in accordance with law. Needless to say that the above assessment is tentative in nature and shall not effect the merits of trial.

J U D G E